NO. 34739-7-III

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III

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State of Washington,

Respondent / Plaintiff,

v.

Jessica Ravenheart,

Appellant / Defendant.

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Appeal From The Superior Court
Of Whitman County
Case No. 16-1-00037-6
The Honorable David Frazier

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# BRIEF OF RESPONDENT

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Denis P. Tracy, WSBA # 20383
Whitman County Prosecutor

P.O. Box 30
Colfax, WA 99111-0030
509-397-6250

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## I. DEFENDANT / APPELANT'S ASSIGNMENT OF ERROR

The defendant argues that one of the prosecutor's statements in rebuttal closing was improper and was so prejudicial that the without the comment the verdict would likely have been not guilty.

The State believes the comment was not error and the outcome would not have likely been different if the comment had not been made.

## II. STATEMENT OF THE CASE

The State agrees with Appellant's Statement of the Case, and offers the following additional facts that support the jury's verdict:

The police officer whom the defendant hit and kicked at the police station, describes the specific actions taken by the defendant that indicated that she intended to hit and kick him, at RP 29-30.

The defendant did argue that Dr. Wilson's testimony should persuade the jury that defendant did not intend to kick or hit the officer. But the doctor did not testify very strongly or clearly to that effect. At RP 54-62, the doctor hesitates, back and forth, between stating that the defendant might have been in a dissociative state. At RP 54: "to a degree of medical probability… it [is] reasonably possible…" that she was having a dissociative event" At RP 60: "you're not able to say to reasonable degree of medical certainty that Ms. Ravenheart had – had this

dissociative event on that date. Correct. … You are able to say that it is a reasonable possibility that she had a dissociative event on that date. That's correct." At RP 60-61, the doctor explains how he has "wrestled" with the question of whether he can even say there is a 51 percent chance (at least) that she had a dissociative event, finally deciding that he would "probably be in favor of saying it's more likely than not" although not really some information that he would like to have to make an informed diagnosis. RP 61.

In the State's first closing argument, the prosecutor recites the evidence the jury has seen. RP 88-89. The prosecutor then reviews the jury instructions and relates relevant points of evidence to elements that the State must prove, pointing out over and over words to this effect: "this is what the State must prove in this case." RP 89-96. The prosecutor reviews the jury instructions, interspersed with brief highlights of the testimony, almost all the while focusing on the defendant's intent and what the evidence shows about the defendant's intent. Id.

The defendant's closing first focused on suggesting to the jury that this was all blown out of proportion. The officer should have been satisfied with an apology and moved on; no one was actually hurt. RP 96. The defense went on to argue that even if she hit him, or kicked him, the

officer shouldn't have been offended or harmed; essentially saying: he's a big guy, he can take it, this isn't a 'real' assault. RP 98-100.

The rebuttal closing, upon which the defense relies as being the basis to overturn the conviction, is only two paragraphs long. RP 100. It is important to view it in its entirety. It follows here:

> "Ladies and gentlemen, I'll try to be brief.
>
> Dr. Wilson didn't testify that [the defendant] didn't have the intent to punch Officer Winegardner. And he didn't testify that she didn't have the intent to kick Officer Winegardner. He testified why she might hit or kick Officer Winegardner.
>
> The case isn't about whether or not someone said they were sorry. This case is about accepting consequences for your actions. And on February 28, 2016, Ms. Ravenwood [sic] got mad, and she got violent. She had violent actions. She needs to face the consequences for those. "

To the extent the trial judge's view is relevant to the question of whether there was a substantial likelihood that the alleged misconduct affected the verdict, this court may note that the trial court stated during sentencing: "I normally don't comment on the jury's decision, but had there been a vote of thirteen, if I'd have been on that jury I'd have found the same thing." RP 115.

## III. ARGUMENT

The State agrees that appellant has cited the relevant case law. The defendant must show the alleged bad conduct by the prosecutor during closing is both improper and prejudicial. State v. Korum 157 Wn.2d 614 (2006). In order to be prejudicial, the appellant must show that there is a substantial likelihood that the misconduct affected the verdict. State v. Stenson 132 Wn.2d 668 (1997).

The rebuttal closing first quite properly pointed out what it was that the doctor had actually said. It next responded to defense counsel's argument that everyone should just be satisfied with the apology that the defendant gave to the officer later that night. The rebuttal closing was not an appeal to disregard the defendant's mental state or an appeal to override the State's burden to prove intent. Indeed, the prosecutor's first closing was full to bursting with focusing on the fact that the State must prove the defendant's intent, and all the facts that did that. The rebuttal closing was not improper.

Even if it is found to have been improper, the appellant has not met her burden to show that the outcome would likely have been different. One short paragraph in 100 pages of transcript, with much of the crime being on tape (the police body cams), simply couldn't carry that much weight. That sentence certainly didn't carry any weight with the trial judge. RP 115.

The case from Minnesota, cited by appellant, does contain prosecutorial misconduct. It is misconduct for a prosecutor to argue to a jury that if people are not held accountable for their actions, then "the entire system of justice that brings us all together here in this courtroom becomes meaningless." State v. Montjoy, 366 NW 2d 103, 108 (1985). Although the Minnesota court did not find reversible error.

But that case is not this case. The comment in this case was in response the defendant's closing argument. Even if it had not been, it did come so close to equating a not-guilty finding with the end of justice.

## IV. CONCLUSION

There was sufficient evidence to support the jury's verdict that defendant was armed with a deadly weapon at the time he committed the murder.

Respectfully submitted this 10 day of July, 2017.

Denis Tracy, WSBA 20383
Whitman County Prosecutor
Attorney for the State

## WHITMAN COUNTY PROSECUTOR'S OFFICE

## July 11, 2017 - 10:20 AM

## Transmittal Information

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| **Filed with Court:** | Court of Appeals Division III |
| **Appellate Court Case Number:** | 34739-7 |
| **Appellate Court Case Title:** | State of Washington v. Jessica Nicole Ravenheart |
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